APPENDIX

COMPLAINT

Filed Sept. 29, 1959.

United States District Court

FOR THE SOUTHERN DISTRICT OF FLORIDA,
TAMPA DIVISION.

No. 3723

DIGNA BARRIOS, as administratrix of the Estate of Mario Barrios, deceased,

Plaintiff,

versus

WATERMAN STEAMSHIP CORPORATION

Defendant.

Plaintiff, by and through her undersigned attorneys, complaining of the defendant, Waterman Steamship Corporation, respectfully alleges:

1. The plaintiff has duly qualified as the administratrix of the estate of Mario Barrios, deceased, and has been granted letters of administration in the County Judge's Court, Hillsborough County, Florida, on the 28th day of September, 1959.

2. The defendant is a corporation with an office in Tampa, Hillsborough County, Florida, and the de-

fendant corporation does transact business in Tampa, Hillsborough County, Florida.

3. At all times hereinafter mentioned, the above named defendant owned and operated a certain vessel known as the "Topa Topa".

4. The deceased, Mario Barrios, was at all times hereinafter mentioned in the employ of the defendant on board the vessel "Topa Topa" as an able seaman.

5. Between approximately 2:55 A.M. and 3:35 A. M. on the 18th day of December, 1957, the decedent was standing watch on the bow of the said vessel in the course of his duties, within the scope of his employment, and while the said vessel was en route from Japan to the United States, when he fell from the vessel and subsequently disappeared and lost his life.

6. The defendant, its officers, agents or employees knew or should have known that the deceased had fallen overboard from the vessel yet the defendant was negligent in the performance of its duty to use care to rescue the deceased.

7. As a direct result of the negligence of the defendant, as hereinbefore and hereinafter alleged, the deceased lost his life.

8. The negligence of the defendant, through its servants, agents and employees, in addition to that hereinabove alleged, consisted of,

(a) failing to turn the vessel to ascertain decedent's whereabouts;

(b) failing to promptly advise other vessels, aircraft or other rescue agencies of decedent's disappearance;

(c) failing to promptly take any other steps to ascertain decedent's whereabouts and rescue him from his peril;

(d) failing to provide a reasonably safe place for decedent to perform his duties;

(e) failing to provide the vessel and decedent with a sufficient number of competent co-employees and superior officers and in that the co-employees and superior officers supplied were negligent;

(f) failing to provide decedent with a seaworthy vessel;

(g) other acts of carelessness and negligence which resulted in the death of plaintiff's decedent.

10. Prior to his death, decedent was a young, strong, ablebodied man earning a good wage, and deceased did contribute to the support of his mother and planned to continue such contributions in the sum of Two Thousand Five Hundred And No/100 ($2,500.00) Dollars per year; that due solely to the negligence of the defendant and its officers, agents, servants, workmen and employees as aforesaid, the mother of the deceased has been deprived of the continuing contributions from her son.

Wherefore, plaintiff elects to maintain this action under the provisions of Section 33 of the Merchant Marine Act of 1920, 46 U. S. Code 688, commonly called the Jones Act, 46 U.S.C.A., 688, and demands judgment

against the defendant in a sum greater than Ten Thousand ($10,000.00) Dollars.

Plaintiff requests and elects a trial by jury.

LA PORTE & DE LA PARTE,
By RAYMOND La PARTE,
Attorneys for Plaintiff,

308 Tampa Street,
Tampa 2, Florida

Testimony of Captain Wallace Royal, Master of the Steamship "Topa Topa" Given Before the United States District Court for the Southern District of Florida, Tampa, Florida, May 16, 1960, In the Case of Barrios v. Waterman Steamship Corporation, As Copied From the Transcript of the Record on Appeal to the United States Court of Appeals, Fifth Circuit.

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"Q. The visibility was good at four o'clock?

A. The visibility was good, yes sir.

Q. Now, subsequently, you determined some gale force wind and low visibility, is that correct?

A. Afterwards, yes sir.

Q. At what time did you encounter that?

A. At 6:49.

Q. Now, up until 6:49 would you have had full control of the vessel and able to turn it to bow at 180 degrees turn?

A. Yes sir.

Q. Up until 6:49?

A. Yes sir.

* * * *

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Q. From your investigation of the situation it was discovered by Cleveland L. Farnham at 3:35 that he was not on duty?

A. He wasn't up there when he went on duty at 3:35. That is what he said.

* * * *

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Q. Did you send numerous radio messages at nine o'clock when you heard of the loss of Mario Barrios to the Japanese Coast Guard?

A. We sent a general message, an urgent message, which was picked up by all ships within our range reporting him missing and giving the area where we assumed he was lost in, reporting him missing and to keep a sharp lookout for him.

Q. The purpose was to assist in his rescue, was it not?

A. To keep a lookout for him. They would naturally pick him up. That is the rule of the sea, if they saw him.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 18,561

DIGNA BARRIOS, As Administratrix of the estate of Mario Barrios, deceased,

Appellant,

VERSUS

WATERMAN STEAMSHIP CORPORATION,

Appellee.

BRIEF FOR APPELLANT

STATEMENT OF THE CASE

The appellant was the plaintiff below. The appellee was the defendant below. In the briefs the parties will be referred to as they stood in the trial court, and the symbol "R" shall be used for "Record on Appeal."

Digna Barrios, as administratrix of the estate of Mario Barrios, deceased, the plaintiff, filed her complaint in the United States District Court for the Southern District of Florida, charging that the Waterman Steamship Corporation negligently contributed to the loss of the life of Mario Barrios, son of the plaintiff, and a seaman serving on a vessel owned by the defendant at the time of the loss of his life. The specific act of negligence alleged was that:

"The defendant, its officers, agents or employees knew or should have known that the deceased had fallen overboard from the vessel yet the defendant was negligent in the performance of its duty to use care to rescue the deceased."

In addition the plaintiff charged the defendant with the following acts of negligence:

(a) failing to turn the vessel to ascertain decedent's whereabouts;

(b) failing to promptly advise other vessels, aircraft or other rescue agencies of decedent's disappearance;

(c) failing to promptly take any other steps to ascertain decedent's whereabouts and rescue him from his peril;

(d) failing to provide a reasonably safe place for decedent to perform his duties;

(e) failing to provide the vessel and decedent with a sufficient number of competent co-employees and superior officers and in that the co-employees and superior officers supplied were negligent;

(f) failing to provide decedent with a seaworthy vessel;

(g) other acts of carelessness and negligence which resulted in the death of plaintiff's decedent."

"Questions Involved On Appeal And Specifications Of Errors", Shown on Page 10 of Brief for Appellant, Filed With the United States Court of Appeals for the Fifth Circuit in Barrios v. Waterman Steamship Corporation.

Question One: Whether or not under the undisputed facts of this case the defendant was negligent in failing to attempt to rescue the deceased and whether or not said negligence contributed in whole or in part to the death of the deceased.

Question Two: Whether or not under the undisputed facts of this case it was the burden of the defendant to prove that proper and timely rescue efforts would have been useless in saving the deceased.

Errors of the Court:

1. In failing to find that the negligence of the defendant contributed in whole or in part to the death of Mario Barrios.

2. In holding that the plaintiff must prove that the negligence must be the proximate cause of the death of the deceased.